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On Being a Professional Elder

Thomas L. Shaffer*

What do we middle-aged academics have to say to the young? We are scholars and teachers, and many of us are Jews or Christians as well. What do we have to say to the young? Who are we, and what is our situation in the modern world? We are “intellectuals”, a term that may be a scoff but when it is descriptive means we are people who earn our living by thinking and who then, in one way or another, market our thoughts. Ours is a noble life, in a noble tradition. Our forebears include Socrates and the Rabbis. But, when we claim these forebears, which we love to do, we may notice that they had clarity and we do not. At least that is what our stories say. Modern representations of us are in novels such as Bernard Malamud’s *Dublin Lives*, or the popular novels of Walker Percy, and of Baltimore’s Anne Tyler. We are seen to be like Macon, the writer of travel books in Tyler’s *Accidental Tourist*, or Morgan of *Morgan’s Passing*, or Will Barrett of Percy’s *Second Coming*.

The wisdom of the elder that we elders saw in the novels we read when we were young has been eclipsed. I think, for example, of a current parallel to the Southern lawyer-hero stories of the two decades after World War II—Harper Lee’s *To Kill a Mockingbird*, for example, or Faulkner’s Gavin Stevens stories. Those were stories of elders, Stevens and Atticus Finch, who gave the young such wisdom as they had.¹ It was *tarnished* wisdom, given by elders who recognized that they were weakened by injustice and self-deception. But, still, it was wisdom. It said that the young would do better than the elders had done. They would do better according to the wisdom the elders taught the young. Gavin Stevens’s final message to his nephew was: “Don’t stop.” Gavin was not exactly a hero—he *talked* too much to be a hero—but he had guidance to give, and he gave it.

In the current stories the elder is not wise, he is not chastened, he is just muddled. Both Gavin and Will Barrett are aging southern lawyers, but Will, like Dubin and Tyler’s men, gets more from his young friend Allie than he gives to her. She gets the worst of their bargain. Will pulls at her youth. He tries to appropriate it. The form of the story, and of the other modern examples, is erotic; each of them presents a story that is in

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1 Compare Stevens’ relationship with Linda Snopes Cole (THE MANSION) and the relationships Macon, Dubin, and Will Barrett had with young women. The comparison is the story of the eclipse of the “sexual politics” of the Southern gentleman.

part the adolescent fantasy of a middle-aged man. But I doubt that sex is the point. The point is that the elder fastens on the optimism and possibility of youth, and that is an archetypal theme. The elder is attracted by the curiosity and optimism of youth; youth is attracted by the knowledge and experience of age.²

The moral issue is whether youth gets a fair return for what youth gives. It is whether the young partner gets what he (she) bargained for. When the young partner loses the benefit of his bargain, he is, in the common judgment of distributive justice, *exploited*. In the Southern lawyer-hero stories of Lee and Faulkner, the young learned how to be gentlemen in a corrupt community. In the current novels of Malamud, Percy, and Tyler, the young are cheated, not because the elders are ruthless exploiters but because the elders are muddled.

Percy's Will Barrett makes a deal with his friend Allie. She has learned to use a pulley; when Will, in his infirmity, falls down, she can pull him back up. "I need you for hoisting," he says, "and you need me for interpretation." Will is pulled up by Allie, but he does not provide meaning for her. She is, in a way, rescued by knowing Will, but her rescue is not to meaning or to growth (which would perhaps lead to a way for her to find meaning for herself). Will's rescue of Allie is a rescue to dependence. "I'd do anything he asks me, she thought, hoist anything."

"I'm all right," she says to Will, "because you are doing the instigating and you seem to know what you're doing." Will then thinks of her as he thinks of his daughter: Love, in either case, is responsibility for the vulnerability of the one you love. Will is enough of a Southern gentleman to remember that the gentleman protects the weak—including the weak who are not weak.³ These young women "are as happy as doodlebugs and you and I would do anything to keep them so," Will says. The stories we read when *we* were young—including some of the Southern gentleman stories—had a different meaning; they didn't speak of vulnerability and they spoke differently about protection; they spoke of risk and of growth. In Faulkner's *Intruder in the Dust*, youth⁴ is able to do what the professional elder cannot do, but youth learns its moral lessons from the elder. For example, youth learns that a gentleman-professional does not desert his people:

[T]hey were his own and he wanted no more save to stand with them unalterable and impregnable: one shame if shame must be, one expiation since expiation must surely be, but above all one unalterable durable impregnable one: one people one heart one land: so that suddenly he said,

"Look—" and stopped but as always no more was needed.

2 A 19th century professional literary image for that is the fruitful friendship between Caleb Farebrother, the vicar, and Tertius Lydgate, the young physician, in George Eliot's *MIDDLEMARCH*.

3 Gavin Stevens's observation in *THE TOWN*. These lawyer stories are considered at length in the first part of my *AMERICAN LEGAL ETHICS* (1985) and in *The Gentleman in Professional Ethics*, 10 *QUEEN'S L. J.* 1 (1984). I am indebted to Mary Montgomery Dunlap's doctoral dissertation, *The Achievement of Gavin Stevens* (University of South Carolina, 1970).

4 Chick, Gavin's nephew, had a black friend and an old woman to help him establish the innocence of a black defendant in a case involving the murder of a white farmer.

"Yes?" his uncle said, then when he said no more: "Ah, I see. It's not that they were right but that you were wrong."

"I was worse," he said. "I was righteous."

"It's all right to be righteous," his uncle said. "Maybe you were right and they were wrong. Just don't stop."

"Even bragging and boasting is all right too," his uncle said. "Just don't stop."

"Don't stop what?" he said again. But he knew what now; he said: "Ain't it about time you stopped being a Tenderfoot scout too?"

"This is not Tenderfoot," his uncle said. "This is the third degree. What do you call it—?"

"Eagle scout," he said. "Tenderfoot is, Don't accept. Eagle scout is, Don't stop. You see? No, that's wrong. Don't bother to see. Don't even bother not to forget it. Just don't stop."

Professional elders, we who teach in universities (to take an example close to home) exploit the young (as Will did, as Gavin did not) when we deny them the possibilities of liberal education—when we preach to them, shut them up, grind them out. We are exploiters, then, as much as the middle-aged intellectuals in the novels who take up with women who are younger than their daughters. We teachers get adulation, independence, and material comfort from our young students. But they don't get what they should expect from aging intellectuals. They don't get wisdom. Often enough they don't even get information. It occurs to me that Tyler, Malamud, and Percy use sex as a metaphor, and the metaphor is about the aging intellectual's stock in trade—the notions that we, in our noble lives, market to the young.

Macon, Morgan, and Dubin are *not* like us in a way that is important and relevant in a university such as Notre Dame claims to be: We are believers. We accept the forgiveness of a loving God—and that should mean that we need not be obsessed, as they in their diffidence often are, with being wrong. Our faith means something even more radical than that: We need not be obsessed with being *right*. God is a loving Father, the Ruler of the Universe, and that means that I, a believer, who wonders what I should say to the young, need not be afraid of the truth. We believe that the truth will set us free. And that means that we can approach the young—in *our need of them*—as fellows, as sisters and brothers who have gifts we need, and who need the gifts we have.

Our situation as believers suggests one way to talk about the difficulty presented in the picture of the modern professional elder as Malamud, Percy, and Tyler present him. (One could add the elders in John Updike's novels—notably the aging theology teacher in the recent *Roger's Version*.) It is a more painful way out than I have thus far made it sound, and, for that reason, I would like to leave it for the last part of this essay and to talk first about two ways out that are suggested in the stories I read when I was younger and looked at and listened to professional elders, as Scout and Jem looked at Atticus Finch and as Chick Mallison looked at his uncle Gavin. One of those is the one Jem mentioned, and Chick implied. "Atticus is a gentleman," Jem said. "And so am I." And the other was suggested by Uncle Gavin when he appropriated the sub-

stance of moral craftsmanship as that had been presented to Chick in the Boy Scouts.

I. The Gentleman

I am a law teacher. I stand before young people who want to enter a profession in America. They want to partake of an expression of trust the community has made to my ancient fraternity, in a mutual recognition, by the community and by my fraternity, that the subject matter of our service, and of the community's trust, is important. My students propose to offer their service in a serious way to individuals who will trust them individually. They promise, or they think they promise, to take this trust seriously and to work hard at it. I would say the same of all young people who seek entrance to the professions—medical students, junior journalists, M.B.A. candidates, seminarians, graduate students in the humanities, as well as law students.

But my moral situation as a professional elder is as tentative as Mac-con's or Will Barrett's would be. I sometimes think the practice of a profession in modern America is impossible, because modern America is, to use Alasdair MacIntyre's image,⁵ a society of strangers. It is difficult to practice a profession in a society of strangers because the condition of professional practice is that the professional person is entitled to consider one limited part of the life of the person who comes to him. He is entitled to concern himself narrowly with a pancreas, or a drunk-driving charge, or the resolution of a marital spat, or the cultural setting of Plato's *Protagoras*.

The narrowness of the service is justified in two ways. First, the professional is forgiven for not tending to the client's other needs because there is a division of labor in the community. I am allowed to ignore my client's pancreas, although he may face death because of it. There is a physician who sees to that. The physician is allowed to ignore the disgrace her patient's drunk-driving charge will bring. She is not licensed to deal with disgrace; I am.

Second, the professional's narrow service is permitted because it is done within the context of a shared sense of what is important. This cultural reference point provides the professional context; a physician or lawyer or teacher serves small needs in reference to large cultural purposes, and finally in reference to history.

However, professional narrowness is immoral in a community that does not attend to what each of its professionals is licensed to ignore. Professional narrowness is immoral in a community that does not preserve a moral context for professional service: What sense does the practice of family medicine, or the preparation of wills and trusts, of Jesus-Mary-and-Joseph, make in a community that leaves the family naked to its enemies?

We professional elders see a community that has lost its ability to make sense of the needs a profession is licensed to serve. It cannot make

⁵ *Patients as Agents*, in *PHILOSOPHICAL MEDICAL ETHICS: ITS NATURE AND SIGNIFICANCE* 197-212 (S. Spiker & H. Englehart eds. 1977).

sense of justice, or of knowledge, or of health, or of salvation (well-being). Professional life is ironic: A corporate lawyer, whose license is to provide order and moral reflection to business people, begins to understand herself as a mouthpiece for oppression *because* we live in a community that deals with its resources in terms of power rather than stewardship. We live in a community in which physicians are asked to see to the health of a prisoner the state proposes to kill, as soon as he is well enough to die. The law is asked to see to legal arrangements for a federal government that ignores the law because it imagines an evil empire. The clergy is asked to say blessings over nuclear weapons and is put on trial for giving shelter to refugees. The community has subverted the licenses it gives to its professionals; and it has made me tentative about training young people in an ancient art. How can we send our students out to practice law in a society of strangers?

Robert Bellah and his associates, in their book *Habits of the Heart*,⁶ seem to me to say that this perception, that we Americans have become a society of strangers, is wrong. The message of that book is one that we professional elders desperately *want* to believe. Bellah says that we are in fact still connected, that family and town and church still hold us together. Our present trouble is that we don't have language for describing our togetherness. That is a wonderful message for a middle-aged academic, who is supposed to be expert at providing language for the description of reality; Bellah is inviting me to get to work.

Bellah says that we have forgotten how to think and talk about what keeps us going. We are not really strangers; we seem to be strangers because we are struck dumb. We are like Zechariah in the Temple;⁷ we cannot *explain* what is going on. We cannot come up with connections in thought and image between our traditions and the lives we are leading. In Bellah's examples, Americans choose traditional family life; the family is therefore not naked to its enemies. We choose traditional republican virtues; we choose, when we can, places to live that will let us be citizens in a town. But we have only sappy words for explaining ourselves—"lifestyle" to explain our communities; "autonomy" to explain our hope for one another; unfounded sentimentality to explain our love for one another; service-club boosterism to describe the Body of Christ. "Impoverished philosophy and vacuous theology," Bellah says. We still have the faith of our mothers, but we have forgotten the words to the hymns. We are doing all right, but we do not know it. Our *morals* are all right; our *ethics* are muddled. Our thinking is muddled. We end up thinking the worst of ourselves. That's why we don't have anything to say to our students: We have been struck dumb. Bellah's report is hopeful because it says we are not strangers. "We find ourselves not independently of other people and institutions but through them. We discover who we are

6 R. BELLAH, R. MADSEN, W. SULLIVAN, A. SWINDLER, & S. TIPTON, *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985). I will refer to these authors collectively when I refer to Professor Bellah.

7 "And now you will be silent and not able to speak until the day this happens, because you did not believe my words, which will come true at their proper time." *Luke* 1:20.

face to face and side by side with others in work, love, and learning.”⁸

If that is so, professional practice is possible for my students because they have something they can appeal to when they talk with their clients. It is possible for me to teach my students how to make moral arguments. The word family, for example, still has possibilities. It is still useful as a focus for professional work in teaching, ministry, law, and medicine. It might even be a metaphor that can be taken seriously when it is used by parishes, business associations, faculties, and professional fraternities. The word *family* might be a word an aging law teacher can talk about when he tries to give his young students what they bargained for.⁹

Habits of the Heart says we have not lost our communities, but only our words. That is an optimistic observation; it is one I want to be right. I ask myself what moral word we have lost, in the American professions, to describe the values we still hold and the commonality we still have. The word is *gentleman*. The word this hopeful book would cause the professions to dust off is the word gentleman. The moral force that holds our professional traditions together is the force that our forebears in medicine, the clergy, journalism, and the law expressed with that word. Bellah is right about the importance of such a word, the moral force of such a tradition: Gentleman's morals are present and powerful in the professions. We hardly ever hear the word anymore—for lots of reasons—but what we doctors and lawyers and pastors want to be is gentlemen.¹⁰ Consider some cases:

(1) St. Elsewhere, a prime-time television program, set out to explore seriously moral questions in the practice of medicine. The young doctors at St. Eligius' Hospital are of both sexes and all probable ethnic groups; they are unconventional in their romances and in what they put in their mouths; but they are docile before the authority of their elders, as medicine still demands that they be. They are professionally docile, and that means these medical stories tend to focus on elders—on the elder physicians, the attending physicians who have something to say to these young residents. “Clinical judgment” is the key in medical education, and that means the clinical judgment of attending physicians. The elders are Doctors Craig, Westfall, and Auschlander—gentlemen all. The stories are rarely about the esoterica of medicine; they are usually stories about telling the truth, admitting mistakes, learning from patients—moral lessons about, and given by, three people who are trying to be gentlemen.

(2) The Southern lawyer stories describes an elder (the lawyer) that has and uses moral authority. One of Faulkner's elders—the last elder he wrote about, in *The Reivers*—says to his grandson: “A gentleman accepts the responsibility of his actions and bears the burden of their consequences, even when he did not himself instigate them but only acquiesced to them, didn't say No though he knew he should.” Chick Mal-

8 I borrow here from my review in *CHRISTIAN LEGAL SOC'Y Q.*, Winter 1987, at 32.

9 A possibility I explore in *The Legal Ethics of Radical Individualism*, 65 *TEX. L. REV.* 963 (1987).

10 The aspiration poses difficulties because many people in the professions are women, or are men who come from American cultures, *HABITS OF THE HEART* does not take into account.

lison learns about risk and growth from his uncle Gavin, the lawyer. Chick learns that a gentleman cannot run away from what he is and where he is; he has to stay and take up the burdens of circumstantial leadership, and he has to use his leadership in moral directions that he—the gentleman—sees when others do not: “Don’t stop” is Uncle Gavin’s final advice on the issue of racism in Mississippi. Don’t stop, even when you are an *accomplice*, as the gentleman in a profession usually is.

(3) The gentleman’s ethic is the expressed morality in codified Anglo-American professional ethics: Sir Thomas Percival, codifier of medical ethics in the eighteenth century, said he was writing his code for gentlemen, as did Baltimore’s David Hoffman, codifier of legal ethics in the next generation. What they meant is that the legal and medical educator depends on established dispositions in the professional novice—that the novice in a profession has or seeks to have what Aristotle called practical wisdom; she or he is a *good* person, a person of integrity. Professional education begins with and rests on this integrity. In the generation after Hoffman’s, the principal source of modern legal ethics, Judge George Sharswood of Pennsylvania, said: “Let it be remembered and treasured in the heart of every student, that no man can ever be a truly great lawyer, who is not in every sense of the word, a good man. A lawyer without the most sterling integrity, may shine for a while with meteoric splendor; but his light will soon go out in blackness of darkness”¹¹

Sharswood’s phrase, “the most sterling integrity,” referred to culture-bound morals, to the morals we learn in our families, our towns, and in the conventional church. There is nothing abstract about these morals: They are not principles; they are habits. We speak of them when we say a person has character. And it was character in this sense that Percival and Hoffman depended on when they set out to teach professional ethics. The law student had to have character first, Hoffman said, and then “it may still be well that he would be fortified with a few rules for his future government” as a lawyer. Hoffman’s *Fifty Resolutions for Professional Deportment*,¹² our first code of legal ethics, began with that observation. This was also Percival’s procedure in medical ethics.

When character is in place, fortified by “a few rules” that have to do with professional craft, the professional person becomes dependable. Professional *character* is the connection between virtue and craft. The convention has been to describe that connection with the word gentleman. This connection and this word are evident when a virtuous craftsman dies and his professional survivors describe him in obituaries. The *New York Times* obituary on Brooks Atkinson was headlined “The Critic as Gentleman in the Audience.” The obituary writer—a colleague—said that what made Atkinson a gentleman was that he was truthful in his work. Tom Shales spoke, in another obituary, of William Powell, “the actor as gentleman.” He spoke of Cary Grant as the

11 *An Essay on Professional Ethics* (Philadelphia 1854), reprinted in 32 REPORTS OF THE AMERICAN BAR ASSOCIATION (1907); also in my AMERICAN LEGAL ETHICS (1985).

12 Hoffman’s “Resolutions” of 1836 are reprinted in my AMERICAN LEGAL ETHICS (1985).

“egalitarian gentleman.” Douglas Faver’s obituary on the political writer Carroll Kirkpatrick spoke of gentlemanly qualities in this same way, a way that connects competence to admirable morals. This is what Percival had in mind for physicians, and Hoffman for lawyers, and it is, I think, an example of what *Habits of the Heart* has in mind when its authors say we have kept our morals and lost our ability to describe them—except, perhaps, in obituaries.

When we revive and explicate the word gentleman, as a description of professional ethics, we have to ask whether the gentleman’s ethic is adequate. That task demands care, notably because that ethic is the only modern professional ethic that has any power.

Still—power or not—there are problems with the gentleman ethic. One concern is hubris. The republican gentleman in America was convinced that those of his class, his race, and his sex were superior to other people. His professional service was *available* to inferior people, but membership in his profession was confined to people like himself. Can we describe the gentleman in a useful way without the hubris? The professions now include significant numbers of women and people from racial minority groups. All of the professions have become vehicles of vertical mobility so that people of modest background can now get into them. But these “new” members of the professions are told to adhere to traditional ways of practice, ways that I would describe as manifestations of the gentleman’s ethic. They are told to leave their special selves—their different voices¹³—at the door.

The new professionals have become as arrogant as the old ones. The professions, which now function with fewer restrictions of race, sex, and class, provide the necessary assurance that habits of patronage and paternalism will survive. Professionalism itself provides what once was provided by upper-class white male delusions of superiority. My profession, for example.

We lawyers have a vast, national, voluntary organization that attracts many of us to membership, and influences all lawyers—the American Bar Association. Three times in the year 1978 the *A.B.A. Journal*, its official publication, referred to “the issue of the decade.” Now, ask yourselves what that issue might have been—the Vietnam War, and all that that military adventure symbolized for the country? The student revolution that ran its course in that decade? The timorous introduction of human rights to American foreign policy? Issues of civil liberties in the Burger Supreme Court? No. None of these. The issue of the decade, according to the *A.B.A. Journal*, was advertising by lawyers.

That, it seems to me, is analogous to duelling in Hamilton’s day, or to sexual delicacy in the novels of Henry James, or to the careful courtesy of the Southern gentleman—analogueous enough to show that delusions of superiority remain in the professions, that the delusions of professionalism have replaced the delusions of race, class, and sex.

Evidence of delusion is not fatal to a professional ethic if the ethic contains within itself the means for overcoming delusion—the skills, or

13 C. GILLIGAN, IN A DIFFERENT VOICE (1982).

esteem for the skills necessary to locating and explicating the truth and thereby overcoming delusion. Perhaps the gentleman's ethic contains within itself doctrines and distinctions that are adequate to overcome its delusions of superiority. I have suggested three—tradition, craftsmanship, and liberal learning.

First, *Tradition*. The defensible part of what was once called good breeding was the preservation of a moral heritage—the fact that gentlemen have memory and are able, particularly in the professions, to remind the community that, as Gavin Stevens said, the past is not dead; it is not even past.

Second, *Craftsmanship*. Ability, which the 19th century community conceded to the gentleman, whether he had it or not, is, in the professions, understood as craftsmanship. The modern Aristotelians (particularly Alasdair MacIntyre and Stanley Hauerwas) speak of this in terms of *goods* internal to *practice*. Professional craftsmanship entails collegueship that comes from learning, at the hands of an elder, demanding standards and relatively rigid attention to telling the truth about our work. There is something distinctive and character-building about participation in such a practice. You can glimpse it, with regard to medicine, in Lewis Thomas's *The Youngest Science*, or Charles Bosk's *Forgive and Remember*; you can get it with regard to the earliest days of modern newspaper journalism in Howells' *A Modern Instance*; Lewis Auchincloss's lawyers show it; and occasionally we academics show it in the way we address and listen to and learn from one another.

There is an excellence here that helps us locate ways to talk to those in other crafts, and to identify moral reference points for talking with our clients. If Bellah is right and our task is description, the description of our traditions of craftsmanship in the professions will be illustrations of ways to live well, rather than certifications of superiority. The "gentleman's code," as another generation thought of it, served the function that today is served by a trustworthy professional, adhering to the standards of her calling, and doing carefully and honestly what the community and her client trust her to be able to do.

I am arguing that craftsmanship is a way to avoid hubris. When you are good at what you do, and you know it, and you know that others trust you to do what you do, you are not hubristic; you are, rather, trained in the skill for recognizing virtues in those who pursue other crafts.

Third, *Liberal Learning*. The ultimate moral peril in professional hubris is idolatry—putting the profession where God ought to be. That is what gentlemen did when they began to think that their notions of honor and shame could cope with what John Henry Newman, in *The Idea of a University*, called "the passion and the pride of man." What happened more precisely, I think, was that the situation of Christian professional gentlemen—their wealth and comfort and status—led them to think that their place in the biblical scheme of things was to attend to inferior people in ways only gentlemen could understand. William Paley, who was an ethical authority among those who drafted the earliest codes of professional ethics, spoke in this way of the gentleman's attending to

the needs of "the lower orders of mankind"; those needs, Paley said, were simple and were simply met. They were best left to parish vicars, who could be depended upon to serve the poor as gentlemen—that is, without fuss and without bothering other gentlemen.¹⁴

The contrasting point of view is the one I associate with liberal learning. It sees wealth and position as circumstances—so that what General Robert E. Lee called "the true gentleman" looks out from his situation with a determination to serve: to serve without humiliating anybody, to serve with an understanding that his ability to serve is only a circumstance, and to serve by teaching these lessons to young people who will inherit position and wealth.¹⁵ Craftsmanship and a sense of tradition aid in that determination, but liberal education ought to be full of it. Liberal learning ought to *liberate the oppressors*; it should at least help us remember that the benefits we have to bring to others are less important than we think they are.

Liberal learning might even save the gentleman's ethic from the most recurrent difficulty I have had in giving talks about it—the sexism in this claim of mine, that the most significant ethic in the American professions is the gentleman's ethic. I was once asked, after one of my three-piece-suit lectures, to change my ways and use "gender inclusive language." But *pronouns* were the least of my troubles! I could say "the gentleman, he or she" all day and not overcome what I think are the *facts* that the gentleman's ethic is what we have to work with, if we are to take Bellah's suggestion about describing our tradition; and that the gentleman's ethic in the professions has been implacably masculine.

Professional ethics, as the ethics of gentlemen, became cemented in sexism in the first half of the nineteenth century, in the division of labor that was imposed on women—the cultural doctrines of separate men's and women's "spheres." The woman's sphere was the home, which meant that the most potent part of moral education for the professions was in the hands of women. The man's sphere—the gentleman's—was adult professional life.

The crudity of late nineteenth century official professional ethics, in medicine, law, and journalism, was due to the fact that men in professional life had been thus *officially* separated from their training in the virtues—training they had at home, in Sunday schools, and in neighborhoods. This training was separate and feminine. We have evident difficulty putting those two spheres back together in professional ethics, but the feminine point of view is now brought into professional

14 Examples are the Rev. Josiah Crawley in Trollope's *LAST CHRONICLE OF BARSET*, and Caleb Farebrother in Eliot's *MIDDLEMARCH*.

15 "The forbearing use of power . . . the manner in which an individual enjoys certain advantages over others is a test of the true gentleman," General Lee said. "That power which the strong have over the weak, the employer over the employed, the educated over the unlettered, the experienced over the confiding, even the clever over the silly—the forbearing or inoffensive use of all this power or authority, or a total abstinence from it when the case admits it, will show the gentleman in a plain light. The gentleman . . . strives for that nobleness of self and mildness of character which impart sufficient strength to let the past be but the past.

ethics—into crude, old-fashioned, masculine, professional ethics—by women. There is now, in Carol Gilligan's phrase, "a different voice" in the professions; this voice is as much a part of the gentleman's moral inheritance as the harsher voices of the masculine professional codes are. What is new is that this voice is being brought into professional ethics not by young gentlemen trained by their mothers, but by women. I rely on the expectation—if Bellah is right—that the different voice will be self-consciously considered in the professions. It will remain the most potent part of moral preparation for the professions, but now it will—I hope it will—be expressly part of professional thinking and not merely an assumption or a prelude.¹⁶

I am suggesting, then, an empirical point, in response to Bellah's invitation to provide words for the morals we still have. The keenest, most significant moral force in the professions in America is—still is—the ethic of the gentleman. I am asking whether that ethic is adequate in view of the fact that the gentleman's ethic in the professions is an ethic of upper-class white men. My answer is that we have overcome the grossest part of our discrimination but have not overcome hubris—that our hubris now is professionalism, and it is available to all colors of people and to both sexes. And then I am suggesting that the presence of this hubris is not fatal to the gentleman's ethic if attention is paid to the preservation of professional tradition, to the profession's esteem for craftsmanship, and to liberal learning.

II. Moral Craftsmanship and Moral Substance

Professional cheerleaders have always said that the profession is in itself a good life. That being a lawyer or minister, a doctor or teacher or journalist in America, is a way to be and to become a good person. That claim means that professional activity itself is ennobling. It means that elders in the profession are authoritative moral teachers. They have, as we Roman Catholics use the phrase, teaching authority. This is an altogether broader claim than the one I described in the last section, when I wrote of craftsmanship as a corrective for professional hubris. The present claim is that professional life is a way of life, a moral universe.

One of the esteemed elders in my trade, Harry Jones, professor of law emeritus at Columbia, contrasted two claims that are made about lawyers as sources of advice for their clients. One claim says the lawyer should be for his client what his client would be if his client *had a law degree*. Jones dismissed this first claim as what he called a manifestation of the ethics of partisanship. All it means is that the lawyer provides his learning to whatever end the client seeks. The other claim, the one Jones endorsed, says the lawyer should behave as if he were his client and his client *had studied law*. The difference Jones said, "is not a quibble; the two standards are profoundly different. If I did not think them profoundly different, I would have to conclude that I had wasted my life in the study and teaching of law." He said he had bet his *life* on the faith that studying

¹⁶ See Marcus, *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFFALO L. REV. 11 (1985).

law is a way to be and to become a good person. A lawyer's value to his client has to do with moral formation in the profession. "The client might be a very different person in his sensitivity to the perception of fairness and justice in human affairs if he had gone through the long course of study necessary to win him . . . [a] law degree," Jones said.¹⁷

Stanley Hauerwas came away from Charles Bosk's description of modern medical residencies with a similar if more tentative judgment about the moral effect of studying medicine. "[O]ne of the most overlooked aspects of our current situation is how medical schools continue to function as schools of virtue," Hauerwas said. "They are among the few institutions in our society that have a coherent . . . purpose that enables them to form character. I only wish we could exhibit the same kind of self-confidence in our seminaries."¹⁸

These claims are more careful and more truthful than those made by professional cheerleaders. When we hear the cheerleaders (on Law Day or in commencement speeches), we tend to think of the periodic polls that show how doctors are slipping in public esteem; they are now behind Supreme Court Justices. Lawyers are just above undertakers, fifteen games out of first place. Jones and Hauerwas are not professional cheerleaders; in fact the observations I quote come from commentaries that are critical of morals in these two professions. What they are claiming is that the professions have been and are capable of being schools for virtue.

One way to take these claims is to notice that they depend on a sort of moral craftsmanship. To learn the skills of the profession is not only a way to avoid hubris, but also a way to learn virtue. Another way to understand the claims is to focus on the moral substance of the profession—medicine as healing, the law as justice, theology as the memory of the church, or the substance of a discipline in the university as wisdom.

First, moral craftsmanship. *The Thinking Man's Guide to Baseball*,¹⁹ an important treatise, and one that I come to late in life, claims that baseball is a way of life that teaches character. Character is the primary skill. Skills in the game will not come to a person who lacks character. And character will come to a person who develops skill in the game. Baseball is a way to be and to become a good person. The *Guide* refuses to recognize a distinction between moral skill and what a mere observer would call technical skill, or between character as the product of moral skill and character as the result of having learned well how to play the game.

Skill is virtue. And skill is the result of disciplined attention to—reverence for—what the professional tradition teaches. Each act in the practice of the game builds or subverts skill. Every act is morally important. Skill results in good acts, and good acts build skill.

A batter who chases the ball outside the strike zone reduces his chance of success in the immediate encounter. He lets the pitcher get

¹⁷ *Lawyers and Justice: The Uneasy Ethics of Partisanship*, 23 VILL. L. REV. 957, 972-73 (1978).

¹⁸ S. Hauerwas, SUFFERING PRESENCE 59 (1986) (referring to C. BOSK, FORGIVE AND REMEMBER (1979)).

¹⁹ L. KOPPETT, ALL ABOUT BASEBALL (1974), a revision of THE THINKING MAN'S GUIDE (1967).

ahead of him; he puts himself at an immediate disadvantage. But, worse than either of these, he undermines his skill. There is a dependent relationship between doing the act well and developing the ability to do the act well: "Anytime a batter swings at a ball outside the strike zone . . . he weakens the accuracy of his own future responses . . ." He undermines his self discipline, and that undermines his reflexes. "[T]he mechanical side of hitting is largely habit: 'good' habits acquired by practice, and 'bad' habits slipped into . . . through fatigue, injury, carelessness, laziness, eagerness, complacency, worry, or experimentation."

The development of batting skill depends on self-discipline in attending to traditional standards. The tradition is so important that even experimentation and eagerness are vices. Ted Williams "insisted that 'good habits' were the primary consideration for a hitter" and that the best habit was restraint—"knowing exactly what the strike zone was and absolutely refusing to swing at anything outside it." The goal of disciplined attention to the tradition is the good habit. That is, the goal is virtue. Discipline in restraint is so important that even fatigue, injury, and worry are vices.

The professional tradition in baseball recognizes that a good batter sometimes does not do what the tradition says he should usually do. But he can depart from tradition only because his judgment has been trained; his judgment is disciplined in respect for the tradition he departs from. A good batter chases the ball in the way Faulkner disdained commas, apostrophes, and conventional sentence structure. Ted Williams, who said the only way to be a good batter was to have good habits, also said that no one can become a good batter by following rules. The author of the *Thinking Man's Guide* said Williams's point was characteristic of the whole game. Baseball is "intuitive and purposeful," that is, baseball is both artful *and* teleological; it respects skill *and* it knows where it is going. Stan Musial departed from the usual rules on batting stance, but only after he had learned them, only after he had learned other good habits, only after he had learned disciplined attention to the world around him, and only after he had developed a professional's settled sense of what he wanted to do.

This dependence on skill rather than on formula is characteristic also of pitching and of medicine. "It's hard to be lucky when your pitching is bad," Walter Alston said. A pitcher cannot begin to practice the mind games that lead to strikeouts until he has the skill and the control to put the ball where he wants it. That is a "technical" skill in some sense, but putting the ball where you want it is also a skill that involves the player's judgment about what is right. That's the way baseball players talk—what is right, meaning *right*. Sandy Koufax said, "It is better to throw a theoretically poor pitch wholeheartedly, than to throw the so-called right pitch with a feeling of doubt You've got to feel sure you're doing the right thing."

Charles Bosk's contribution to ethics in the professions is his description of the primacy of clinical judgment in the training of a physician. Education in medicine, as in baseball, has two standards of

excellence—science (the percentages) and clinical judgment (integrity). When science is in conflict with clinical judgment, clinical judgment prevails. That is because science is not a virtue; it is information. In medicine, clinical judgment is the virtue. The most significant lesson the young professional learns, in medicine or in any of these practices, is the primacy of clinical judgment. There are no secrets in coaching baseball, the *Guide* says. The coach provides information and insight, the evidence of his senses; “only the player himself can make [the] improvement, by willing application (a reaction rooted in character) . . .” Improvement results from disciplined skill—the product of having learned how to play the game well—and from the player’s respect for the integrity of the coach. Respect not so much for the coach’s information as for his integrity. In medicine the integrity of the coach is defined as clinical judgment.

These are Aristotelian accounts of professional formation, of the meaning of skill in a profession, and of the identification of moral skill and “technical” skill. They raise a problem—and that is the professional who seems to be skillful at what the profession does, who enjoys the apparent esteem of professional colleagues, but who seems not to be a good person. What about the stories we heard about Ty Cobb, in the 1985 season, as Pete Rose made his way to the hitting record? What about the skillful and evil doctors Sinclair Lewis wrote about in *Arrowsmith*? What about the disgusting old lawyer James Mason portrayed in “The Verdict”? If there is anything to the theory that professional skill and moral skill are the same skill, the theory will have to account for these scoundrels. I suppose the theory will say that these scoundrels failed at professional skill. They were not as good as we thought they were at the practice of professional skill. Or they succeeded because of defects in the practice, or the corruption in institutions in which the practice occurred.²⁰

This is to say that the profession, by defining what is skillful, is inherently susceptible to self-deception. Knockdown pitches are an example. The *Guide* says that frightening a batter with a knockdown pitch is not a moral issue. Only if the pitcher throws at the batter’s head, *intending* to hit him, is “a real moral question” presented.²¹ The distinction between the intent to frighten and the intent to hit, it seems to me, is evidence of self-deception. And I think the players know about the corruption, however the *Guide* defines what “a real moral question” is. A pitch that is in the vicinity of the batter’s head, that looks as if the pitcher intended to *scare* (not hit) the batter, brings retaliation. And the retaliation comes whether or not the pitcher intended to hit the batter. In fact, the

²⁰ The theoretical basis for the practice as a source of virtue is in Alasdair MacIntyre’s seminal study, *AFTER VIRTUE* (1981, 1984). He does not apply the theory to the professions of law and medicine, but he does mention baseball.

²¹ A pitch that hits a batter in the head is not the issue. A knockdown pitch knocks the batter down—if it does—because the batter falls down in order to avoid being hit. A bean ball, according to COLLIER’S ENCYCLOPEDIA, is a pitch aimed at the batter’s head, but usage as I hear it suggests to me that a bean ball is one that is both aimed at the batter and hits him. It is illegal in baseball and should be regarded in law and morals as attempted homicide. Sports announcers on television are not precise in their use of these words.

retaliator assumes, as the *Guide* does, that the pitcher did not intend to hit the batter.

It seems to me that a process for the correction of self-deception is at work here. Maybe the verbal tradition says that the intimidating pitch is not a moral question, but the practitioners of the art know better. They behave as if the intimidating pitch is a moral question. They know what the moral question is; you can find it in their behavior. The final and dependable corrective in a tradition is a teleology beyond the teleology, a way to be truthful.

The same process is evident in the law and in medicine. Modern American lawyers are strident in their defense of the adversary ethic, which says that a lawyer need not be concerned about what her clients do with her advice and the results of her skill. But good lawyers do not believe in the adversary ethic; they never have. They say it, but they don't believe it. If they believed it, they wouldn't say it so much. Clients don't believe it either: "Men of large affairs do not select their legal admirers entirely or principally for ethical insensitivity," Harry Jones says. Lawyers are like the pitcher who knows what to do when the opposing pitcher starts aiming close to the batter's head. They retaliate—sometimes in a professionally acceptable manner, sometimes not—and thereby provide the necessary corrective.

Bosk provides several examples of how physicians acting collectively come to a manifestly moral conclusion about patient treatment, or about the career of a resident, and then hide their moral judgment in scientific explanation. Wendy Carlton describes a case that involved a surgeon's refusal to perform a hysterectomy on a young woman who was mentally retarded but not otherwise a candidate for sterilization. He refused because the patient had a bad heart; he decided she had a bad heart because mentally retarded people often do. He did not check her heart.²² This is an instance, as the baseball and legal examples are, of the fact that professional authority "derives from physicians' and patients' common moral beliefs and shared participation in a practice that embodies those beliefs. The physician's authority . . . is based upon mastery of the moral and practical skills involved in [the] physician's commitment to care for and never abandon the ill and the dying."²³ The practice is self-correcting; the means of its self-correction is an appeal to the teleology implicit in its announced professional teleology—an appeal to moral commitments it finds in the culture in which it practices.

The possibility I have meant to suggest from *The Thinking Man's Guide* is that the professional tradition itself carries the answer to the question of how the professional is to teach the young—that being a teacher, or a minister, or a physician, or a lawyer, is itself a way to become a good person. The young can depend on the morals that are internal to or implicit in the profession because the profession itself is a moral teacher. Such claims are expressed in medicine's insistence on the

22 A.W. CARLTON, IN THEIR PROFESSIONAL OPINION: THE PRIMARY OF CLINICAL JUDGMENT OVER MORAL CHOICE 32-56 (1978).

23 S. Hauerwas, *supra* note 18, at 46.

primacy of clinical judgment. This is not to claim that the professional morality exists apart from the morality of family, town, and church. Professional excellence depends on those morals, as Hoffman and Percival said; character, conventionally formed, is still essential to professional excellence.²⁴

I suggested that there are two ways to approach the claim that the professional is a moral teacher. One is in terms of skills for doing professional work. This is to look at the profession as what the modern Aristotelians call a practice. A skill in a profession is both "technical" and moral; a distinction cannot be made between the two kinds of skill. It was that suggestion I tried to explore through the wisdom of *The Thinking Man's Guide*. The other way to explore this claim is through the substance of the profession's learning—through, for example, notions of beauty and truth in the humanities or through the concept of ministry as ministers preserve and discuss ministry. John Calvin said that the principal use of the law was meditation on the Divine Will. The law operates to convict us of our sinfulness, and to restrain us if we are not repentant. The *Talmud* records Rabbi Hanina's teaching: "Pray for the government," he said, "since were it not for the fear of it men would swallow each other alive."

But principally the law is a way to study the will of God in the world. One example is as an expression of grace. "[T]he Christian individual's experience of forgiveness, rebirth, new life, and new being in a profoundly personal reconciliation with God in Christ was understood (by Calvin) as leading and driving that individual *out* from personal blessedness within the worshipping church *into* the pursuit of justice and peace and the good life for the whole human community. This pursuit is accomplished not as individuals but through the political and social structures of the civil community."²⁵ This is a cosmic process, a process in which human will is joined to Divine Will—and its means is the law.

III. Our Situation as Believers

The third sign of hope for the elder in America, the elder who proposes to guide the young (and this particularly in a profession) is the religious tradition. Bellah's work suggests the possibility that the religious tradition still has vitality in the habits of our hearts (and therefore in professional life), although he muddles the church with American democratic liberalism. I want to explore the possibility in a primitive way.

Let me start with a question suggested by John Howard Yoder: What if we (in a room hearing me say those words, or figuratively gathered to write and read these words) were the only Christians in America, and therefore the only people who might be expected to act as Chris-

²⁴ See my essay, *The Profession as a Moral Teacher*, 18 ST. MARY'S L.J. 195 (1986), revised in FAITH AND THE PROFESSIONS (1987).

²⁵ A. Come, *A Calvinist's Reformed View of Church and State*, 19 PAC. THEOLOGICAL REV. 44, 49 (1986), discussing 4:1 and 4:20 of Calvin's *Institutes*; see my *Jurisprudence in the Light of the Hebraic Faith*, 1 NOTRE DAME J. OF LAW, ETHICS, AND PUB. POL'Y 77 (1984).

tians? If that was our case, what would we be doing?²⁶

As long as we were together, we would be talking about going out from where we were and telling people about our leader. Our leader, we would say, was an itinerant rabbi, a Pharisaic Jew, who taught us a way of life. He called it a *kingdom*, but he wasn't much of a king. He told us to tell other people about his way of life. His teachings upset the government, and the government tortured and killed him. And then he rose from the dead. That is what happened.

Well—the people who heard us would say—that's a remarkable story, but what are *you* up to? And we would say we are up to telling them about our leader. Is that all? Well—no—because he told us *how* to go about telling you about him. For one thing, he said we were to act together, to come together as we go about this telling. In Karl Barth's phrase, we meet in order to separate and separate in order to meet. So we are a group, a family perhaps, as Israel was and is a family.

For another thing, we are supposed to be a prophetic people, we would say. That is, we are to behave as the Hebrew prophets behaved in their times and places; we are to tell the truth about what is going on. Further, we are to be a *servant* people. Our leader's instructions on servanthood were translated by his closest followers so that the Greek word used was the word for *slave*. In telling about him, and in being truthful about what is going on, we are to act as servants. Finally, we are to go about his telling, in this truthful and subordinated way, as people who live in a world they do not control.²⁷

Sooner or later, if we were the only Christians in America, one of our number would come back to one of our meetings and say to us, “[w]e have to *do* something about the world.” The rest of us would, like middle-aged intellectuals, ask him to define his terms: “What do you mean by ‘the world’? Do you mean the government? Surely we do not have to do something about the *government*. Think of what we will end up *doing* in order to be *able* to do something about the government.” We will have to accommodate ourselves. We will have to act less and less like a particular people, gathered in a room to remember what our leader said about how we are to live. We cannot do something about the government unless we make necessary accommodations.

“But if we don't make necessary accommodations, as we go about telling people about our leader, in the ways he told us to, the likelihood is that we will be dismissed as kooks. In modern America, we might be tolerated, provided there aren't too many of us. It's not that we mind being dismissed as kooks; we are, after all, servants and prophets. But if we are dismissed as kooks, we won't be effective.” And then somebody will quote Mother Theresa: “We are not here to be effective; we are here to be faithful.”

²⁶ I say “church” here, and explore this point in terms of the religious tradition as I have been formed by it. But the point does not depend on a narrowly Christian context. Christians—Jesus himself—learned about the people of God from the Jews, and Martin Buber made this analysis in terms of the people of God within the modern state of Israel.

²⁷ I am indebted to John Yoder's *PRIESTLY KINGDOM* (1984) and Stanley Hauerwas's work, particularly, on these points, *THE PEACEABLE KINGDOM* (1983) and *AGAINST THE NATIONS* (1985).

This is a radical way to think. Theologians in the mainline churches have controlled this point of view by calling it *sectarian*. Their forebears in Europe, and our colonial forebears, controlled this point of view by killing the people who believed it. It does run against the grain in Christian America.

It runs against the claim the mainline church made in America that this country was the new Jerusalem. It runs against the wisdom of the late nineteenth and early twentieth century Social Gospel, which was an admirable attempt to rescue the country from the cruder end of the industrial revolution, and to rescue the professions (by the way) from the ravages of market morality. Those thinkers spoke of the redemption of politics; they spoke of a *saved* social order in America. They said that American democracy was a faith, that democracy was *the* Christian social order. The Social Gospel thus provided a religious—Christian—justification for government by the elite in America, and that is the religious justification for the professional ethics of the gentleman. Such a government is justified, as in the Gospel (Luke 22: 25-26), because the governor is a benefactor. Such a government is justified because the people consent to it, which was the appropriation of the church by the Scots Enlightenment. Such a government is justified because it is representative, which, even if the claim is true—and it hardly ever is—puts the moral question back one step: Representative of what?

Finally, this radical, all-in-one-room point of view runs against the wisdom of earnest Christians who want to restore the organizing imagery of Christian faith to political discourse in America. Who want, in Richard Neuhaus's phrase, to put something back into the naked public square. That is also Robert Bellah's project, in his attempt to locate and describe America's habits of the heart.

* * * *

We are not the only people in America who are prepared to act as Christians, but I hope these reflections suggest some reasons to stop and think about how our moral world would work if we *were* the only people prepared to act as Christians. That would be to define the church as a minority, for sure. It would be to see it as not subject to the definitions of the larger society. The larger society, like the Roman Empire in the first century, wouldn't pay much attention to us. We would have to decide, among ourselves, and in meditation on the words of our leader, what we were and what we were going to try to be. And we would locate, in our own one-room culture, the arguments we wanted to make as we spoke to the world outside about what is going on.

John Howard Yoder, who, with Stanley Hauerwas, has provoked these reflections, teaches undergraduate theology at Notre Dame. He was teaching undergraduates here when I taught law here, and, of course, I taught some students in the law school who had been students of his in college. One of these, an earnest Irish Catholic, wanted to go to law school but wondered if he should, and he went to talk to John about it. He told John that it worried him to think about how he would be both a Christian and a lawyer. "Well," Yoder said, "maybe a Christian can't

be a lawyer.” That would be the way we would talk about being in a profession, if we were the church, and all there was to the church, in America. One of us would say he would like to try to cure sick people. Then we would talk about whether a Christian can be a physician in modern America. Imagine our talk about other possibilities—judge or soldier or politician or college teacher. Yoder’s laconic observation to that student is like the questions asked to putative converts in the early church, like the questions we might ask if we were the church and someone came to the door and said he wanted to join us. In the early church, such a person was asked if he had anything to do with government. If so he was asked to give it up, and if he would not he was denied baptism. I suppose being a lawyer would—as Yoder said—be a difficult case.

On what terms, I wonder, would we baptize a professor?